

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MICHAEL FLYNN,)	FOIA Control No. 2013-354
SITE MANAGEMENT SOLUTIONS, INC)	
)	
On Request for Inspection of Records)	

MEMORANDUM OPINION AND ORDER

Adopted: September 30, 2013**Released: September 30, 2013**

By the Commission:

1. By this Memorandum Opinion and Order, we dismiss as untimely an application for review filed by Michael Flynn of Site Management Solutions, Inc.¹ Mr. Flynn requests review of a decision of the Chief of the Mobility Division of the Wireless Telecommunications Bureau (Bureau)² denying his request for “all communications, notes, and related documents, emails between staff, staff and wireless operators T-Mobile and Cingular Wireless as it pertained to the Network Infrastructure Agreement during 2000-2004/5 for CA and NY markets.”³

2. On July 8, 2013, the Bureau denied Mr. Flynn’s FOIA request, noting that the instant request was “substantively the same” as his previous FOIA requests.⁴ Mr. Flynn’s previous FOIA requests were denied in part based on FOIA Exemptions 2 and 5.⁵ The Bureau Decision advised Mr. Flynn that if he wished to seek review of the decision, he was required to file an application for review with the Office of General Counsel within 30 calendar days of the date of the letter.⁶ Mr. Flynn’s AFR

¹ Letter from Michael Flynn, Site Management Solutions, Inc., to Roger Noel, Chief, Mobility Division, Wireless Telecommunications Bureau (dated Aug. 27, 2013, rec’d Sept. 5, 2013) (AFR).

² Letter from Roger Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Mr. Flynn (July 8, 2013) (Bureau Decision).

³ Email from Mr. Flynn to FOIA@FCC.GOV (sent June 7, 2013, logged in June 10, 2013) (FOIA Control No. 2013-354).

⁴ Email from Mr. Flynn to FOIA@FCC.GOV (sent July 9, 2007, logged in July 13, 2007) (FOIA Control No. 2007-430), request granted in part and denied in part by letter from Roger Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Mr. Flynn (Sept. 12, 2007); Email from Mr. Flynn to various Commission staff (dated Nov. 2, 2007, logged in as a FOIA request Nov. 13, 2007) (FOIA Control No. 2008-068), granted in part and denied in part by letter from Roger Noel (Mar. 21, 2008). Mr. Flynn did not seek review of either of the Bureau’s responses to his two previous FOIA requests.

⁵ 5 U.S.C. §§ 552(b)(2) and 552(b)(5).

⁶ Bureau Decision, at 2, *citing* 47 C.F.R. §§ 0.461(j) and 1.115.

was dated August 27, 2013, and received September 5, 2013. Mr. Flynn's filing was more than 20 days after the August 7, 2013 due date,⁷ and we therefore find it was untimely.⁸

3. ACCORDINGLY, IT IS ORDERED, that the Application for Review filed by Michael Flynn IS DISMISSED. Mr. Flynn may seek judicial review of this action pursuant to 5 U.S.C. §552(a)(4)(B).⁹

4. The following officials are responsible for this action: Acting Chairwoman Clyburn, Commissioners Rosenworcel, and Pai.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁷ See 47 C.F.R. § 1.4(c) (the first day to be counted when a period of time begins with the occurrence of an event is the day after the event); *see also* 47 C.F.R. § 1.4(b)(5) (for documents not published in the Federal Register, released to the public, or referenced in a public notice, Commission action occurs on the date *appearing* on the document).

⁸ *See Robert Newton*, [FCC] 13- 103 (July 30, 2013) (2013 WL 3943486) (dismissing application for review filed over 90 days late); *The Consumer Law Group*, 28 FCC Rcd 684 ¶ 5 (2013) (dismissing application for review of a FOIA decision filed three days late); *see also Michael C. Olson*, 13 FCC Rcd 20593 ¶ 1 (1998) (dismissing application for review filed one day late); *Application of Board of Education of the City of Atlanta*, 11 FCC Rcd 7763, 7765-66 ¶ 6 (1996) (same).

⁹ We note that as part of the Open Government Act of 2007, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect Mr. Flynn's right to pursue litigation. Mr. Flynn may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448